IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6270 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDUSINH SUKHABHAI - Petitioner(s)
Versus
ADDITIONAL CHIEF SECRETARTY (APPEALS) & 3 - Respondent(s)

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Appearance :
MR CHIRAG PATEL for Petitioner(s) : 1,
MR LR PUJARI, AGP for Respondent(s) : 1 - 3.
None for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/03/2007

ORAL JUDGMENT

1. Shri Chirag Patel, learned counsel for the petitioner; Shri L.R. Pujari, learned AGP for the respondents no. 1 to 3. None for the

respondents.

2. Petitioner, Chandusinh Sukhabhai Solanki being aggrieved by the order dated 16.7.94 passed in Case No.Jamin/Sharatbhang/Case No.10/92 by the Assistant Collector, Godhra, order dated 13.9.94 passed in Case No. Jamin/Revision Appeal No.4/94 Vashi 4360-64 by the learned Collector, Panchmahals at Godhra and order dated 13.6/7.95 passed by the Additional Chief Secretary [Appeals], Revenue Department in Case No. SRD/Jamin/PACHAM/15/94 under which entry no. 718 dated 28th August, 1979 made in favour of the petitioner, was confirmed on 3.10.79 was cancelled, is before this Court.

3. The short facts necessary for proper disposal of the present petition are that, the present petitioner on 9.4.75 purchased Block No. 61 admeasuring 1 Hectare 19 Are and 38 sq.mts at village Koprej from Solanki Himatsinh Motisinh, respondent no.4. He made an application for entry in his favour, entry no. 718 was made on 20.8.79 and was ultimately confirmed on 3.10.79. Almost after 15 years of the said entry and its

confirmation, the Assistant Collector issued a notice to the petitioner to show cause as to why entry be not cancelled. The petitioner filed his reply and submitted that such entry was legal, the petitioner had paid the consideration, the petitioner was an agriculturist and was holding some land. The Assistant Collector, Godhra, by his impugned order held that the land survey no. 61 was new tenure land and without permission, the same could not be sold. He accordingly directed cancellation of the entry, the said order was confirmed by the Collector and the Additional Chief Secretary [Appeals], Revenue Department, therefore the petitioner is before this Court.

4. Shri Chirag Patel, learned counsel for the petitioner, placing reliance upon certain judgments of this Court and the Supreme Court submits that suo motu revisional powers are required to be exercised within reasonable period which would mean in given cases three to six months and maximum would be three years. His submission is that the entry was made on 28th

August, 1979 and if was confirmed on 3.10.79, then, after lapse of 15 years, dead could not be exhumed for its post-mortem. His submission is that present is a case where authorities could not have exercised their suo motu powers to undo what was done long back and under the entry, the petitioner presumed that he has become owner of the property.

5. Shri L.R. Pujari, learned AGP for the State submits that if the sale was patently illegal and was not permissible in law, then, any delay would not legalise what was void ab initio. His submission is that new tenure land is required to be sold with the permission of the authority and if it is not so done, sale would be void.

6. After hearing the parties and on going through the submissions made in the petition and the findings recorded in the orders passed by the subordinate Tribunal, I must hold that the authorities were not entitled to exercise suo motu revisional powers to correct the entry which was made in the year 1979 almost after 15 years, specially when orders did not show that

what persuaded the authorities not to take up the issue right in time.

7. On this short ground, I must allow the petition, which I accordingly do. The petition is allowed. All the orders passed by the authorities are hereby cancelled and the entry no. 718 made on 20.8.79, confirmed on 3.10.79 is directed to be restored. Rule is made absolute. No costs.

[R.S. GARG, J.]

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